In the Supreme Court of the United States.

OCTOBER TERM, 1923.

EPHRAIM LEDERER, COLLECTOR OF INTERNAL REVENUE OF THE FIRST DISTRICT OF THE STATE OF PENNSYLVANIA, petitioner,
v.
FIDELITY TRUST COMPANY, RESPONDENT.

No. ——.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

The Solicitor General, on behalf of Ephraim Lederer, Collector of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Third Circuit, rendered in the above-entitled case on July 5, 1923, reversing a judgment entered by the District Court, which held that the stamp taxes paid under protest by the respondent could not be recovered.

STATEMENT.

This is an action brought by the respondent to recover stamp taxes paid to the Government, under protest, by virtue of the Revenue Act of 1918, Title XI, Schedule A, Stamp Taxes (Bonds of Indebtedness) (40 Stat. L. 1057, 1133, 1135), on the issuance of certain car-trust certificates.

This case was tried in the District Court for the Eastern District of Pennsylvania and resulted in a judgment for the defendant. The Circuit Court of Appeals, however, held that, when the transaction is viewed as a whole, the certificates upon which the stamp taxes were paid did not carry any indebtedness or obligation from the trustee to the holder, but that they were simply a certificate of the holder's right to proportionate shares of the rental when paid, and accordingly reversed the judgment of the District Court. Petitioner now seeks to have this judgment of the Circuit Court of Appeals, reversing the judgment of the District Court, reviewed by certiorari.

QUESTION INVOLVED.

The only question to be considered in this case is whether the equipment-trust certificates are subject to stamp tax under the provisions of the Revenue Act of 1918, Title XI, Schedule A, Stamp Taxes (Bonds of Indebtedness).

THE FACTS.

By an agreement between respondent, the Fidelity Trust Company, and the Interstate Railroad Company the former purported to lease to the latter five hundred (500) steel hopper cars. The agreement provides for the payment annually by the railroad company for a period of ten years of one-tenth ($90,000) of the amount of car-trust certificates, which were issued by the trustee, the respondent herein, to the various subscribers to the trust fund. In this trust fund, known as the "Interstate Rail-

road Equipment Trust, series C," provision was made for the issuance of nine hundred (900) car-trust certificates of the denomination of $1,000 each, to be issued to those who had subscribed to the fund of $900,000. The certificates in question were issued under what is commonly known as the "Philadelphia Plan."

The agreement secured to the subscribers the payment in ten consecutive annual instalments of $90,000 each, "with interest from the first day of February, 1920, at the rate of six per cent (6%) per annum, payable semiannually on the first day of February and the first day of August in each year, payment of said principal and interest to be made as herein set forth." Attached to each of the certificates are the ordinary forms of interest coupons, which, however, are described as "dividend warrants." They provide for the payment of $30 upon surrender thereof, "being the semiannual dividend * * * payable only out of the rentals under the lease referred to in the said certificates." A copy of the certificates is printed below for the convenience of the court.

> Due to the bearer hereof on the 1st day of ————, 19—, on surrender hereof at the office of Fidelity Trust Company, Philadelphia, the sum of Thirty ——— 00/100 Dollars ($30.00) in United States Gold Coin, being the semiannual dividend on Certificate No. —— of Interstate Railroad Equipment Trust Series C, payable only out of the rentals under the Lease referred to in the said Certificates.
>
> FIDELITY TRUST COMPANY, *Trustee.*
>
> By ——— ———, *Treasurer.*

REASONS FOR GRANTING THE PETITION.

1. The so-called "car-trust certificates," issued under the "Philadelphia Plan," are taxable under the Revenue Act of 1918 (subdiv. 1, sched. A, Title XI).

2. The instant case involves a question of general public importance, and a final determination of this question will avoid multiplicity of suits.

3. The question involved may in its application to other issues of "car-trust certificates" involve a substantial sum of money to the Treasury of the United States.

JAMES M. BECK,
Solicitor General.

BRIEF IN SUPPORT OF THE PETITION.

I.

The so-called "Car-Trust Certificates," issued under the "Philadelphia Plan," are taxable under the Revenue Act of 1918 (Subdiv. I, Sched. A, Title XI).

The Government assessed and collected the stamp tax in question, basing its right so to do on the provision of the Revenue Act of 1918, subdivision (1), Schedule A, Title XI, which reads as follows:

> 1. *Bonds of Indebtedness.*—On all bonds, debentures, or certificates of indebtedness issued by any person, and all instruments, however termed, issued by any corporation with interest coupons or in registered form known generally as corporate securities, on each one hundred dollars of face value or fraction thereof, five cents: *Provided*, That every renewal of the foregoing shall be taxed as a new issue: *Provided further*, That when a bond conditioned for the repayment or payment of money is given in a penal sum greater then the debt secured, the tax shall be based upon the amount secured.

It is the contention of the Government, which is urged upon this Court for its earnest consideration, that the Act of Congress speaks for itself, and no strange or unusual meaning can be read into it, as contended for by the respondent. Since there has been no judicial determination or construction given

to the statute involved, or to the issues before the Court, other than the instant case, it is incumbent upon the Government to analyze the words of the Revenue Act of 1918, which are pertinent to a solution of the instant case.

The first part of the statute to be considered is whether the certificates in question are "certificates of indebtedness."

In connection with this point, the Government is content to quote the language of his Honor, Judge Dickinson, in the determination of the instant case in the District Court:

> Congress may tax by [illegible] in any way what is taxed. [illegible] dictate the taxed thing by naming [illegible] describing what it is in form or [illegible] in substance and effect. [illegible] has indicated (whatever the way [illegible] which this is done) the thing which is taxed, the taxpayer can not repeal or nullify the taxing act nor escape the tax by merely changing the name of the thing. Nor can he escape the tax by changing the mere form of the thing unless Congress has limited the tax to things of another form. Apply these abstractions to the fact situation here. Car trust certificates (in whatever form other than this) are admittedly taxed because they are certificates of indebtedness issued by some person. This plaintiff can not exempt this car trust certificate by merely changing its name to that of a Philadelphia plan car trust certificate. It is described in the act as a certifi-

> cate of indebtedness issued by a railroad company. The holder will get nothing unless the railroad company keeps its promise to pay the money advanced with interest. This creates an indebtedness.

Going a little further into the wording of the Act we find that it specifically taxes "all instruments, however termed, issued by any corporation with interest coupons or in registered form, known generally as corporate securities." It will not be denied that a car-trust certificate is an "instrument," because it is a document or writing; because a car-trust certificate falls within the general purview of the meaning of the word "instrument" as it is used in the popular sense. Since a car-trust certificate must be conceded to be an "instrument," the next question to be answered and settled is whether the "instrument" has been "issued by any corporation." It will neither be denied that the Fidelity Trust Company, respondent herein, was and is a corporation, nor that the certificates were issued by it. The "interest coupons" mentioned in the statute are similar to the "dividend warrants" which are attached to the car-trust certificates. "Interest coupons" and "dividend warrants" serve the same purpose to the holder; that is, they are the means of collecting the interest on the principal which has been advanced by the certificate holder, which, in the instant case, amounts to six per cent per annum, payable semiannually.

Finally we come to the question of whether a car-trust certificate is a "corporate security" within the meaning of the Act. If a corporation issues a security, obviously it is a corporate security. This term "security" has a various meaning, according to the following accepted authorities:

Bouvier's Law Dictionary, 3d Revision, Vol. 3, p. 3032:

> That which renders a matter sure; an instrument which renders certain the performance of a contract.

Words and Phrases, 2d Series, Vol. 2, p. 500:

> One definition of the word "security" is that it is something which makes the enjoyment or enforcement of a right more secure or certain.

Webster's New International Dictionary, 1919 Edition:

> An evidence of debt or of property, as a bond, stock certificate, or other instrument, etc.; a document giving the holder the right to demand and receive property not in his possession.
>
> Securities on property; giving a lien or claim on property, which may be specified, the security then being termed specific, * * *.

Whitely v. *Arbogast*, 17 Ohio S. & C. Pl. Dec. 569, cities Bouvier, quoted above.

Mace v. *Buchanan*, 52 S. W. 505, applies the term "securities" to "live and negotiable commercial obligations, * * * and other obligations considered generally safe or secure."

II.

The instant case involves a question of general public importance.

In the cases of *Field* v. *United States*, 205 U. S. 292, *Forsyth* v. *Hammond*, 166 U. S. 506, and *United States* v. *Rimer*, 220 U. S. 547, this Court in effect said that it would grant a petition for a writ of certiorari if the case is "one of gravity and general importance" and contains a "matter of general interest to the public." It is believed that the instant case is of such general public importance that it falls within the cases cited above. The decision of the Circuit Court of Appeals is detrimental to the interests of the Government in the collection of revenue under the Revenue Act of 1918 and is directly opposite to the ruling of the Treasury Department.

It is not possible to estimate the amount of taxes involved in the instant case for the reason that the stamps are purchased in large quantities from the various collectors without any designation of the use to which they are to be put. In the last few years a large number of the car-trust certificates have been issued. It is therefore apparent that if the decision of the Circuit Court of Appeals is allowed to stand, numerous other suits may be filed for the recovery of stamp taxes. It is therefore highly desirable to have this Court finally pass upon the legality of this tax so as to avoid a multiplicity of suits being filed, with strong possibility of conflicting decisions, in already congested courts.

CONCLUSION.

It is respectfully submitted that a writ of certiorari should be issued to review the judgment of the Circuit Court of Appeals for the Third Circuit.

Respectfully submitted.

JAMES M. BECK,
Solicitor General.

MABEL WALKER WILLEBRANDT,
Assistant Attorney General.

SEPTEMBER, 1923.

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